[redacted]

Supreme Court of the United States

October Term, 1977

F. CLARK HOFFMAN, *et al.*,
Petitioners

v.

WESTERN NUCLEAR, INC., *et al.*,
Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Tenth Circuit

BRIEF OF THE GOVERNMENT OF CANADA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the proviso "to the extent necessary to assure the maintenance of a viable domestic uranium industry" in 42 U.S.C. § 2201(v) *requires* the Department of Energy to exclude foreign uranium from access to the United States for enrichment and sale, even though the Department has found that the United States uranium industry is not viable, that such non-viability is not caused by imports of foreign uranium to be enriched in the United States, and that viability will not be restored if the embargo is imposed.

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IN THE
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OCTOBER TERM, 1987

No. 87-645

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THE INTEREST OF AMICUS CURIAE

The Government of Canada submits this brief in support of Petitioners * because the decision below threatens important political, legal and commercial interests shared by Canada and the United States. Canada is the largest foreign supplier of uranium in the United States market and in the western world.[1] Canada has been a partner with the United States in the development of

* Petitioners and Respondents have both consented to the filing of this brief; the written consents are on file with the Clerk.

[1] Energy Information Admin., U.S. Dep't of Energy, *Domestic Uranium Mining and Milling Industry: 1986 Viability Assessment* 9 (1987) (hereinafter *1986 Viability Assessment*).

nuclear energy for peaceful purposes since World War II. The Canadian government was encouraged by the government of the United States to develop a uranium industry for the security and economic benefits of both nations in their North American alliance.

After passage of the Private Ownership of Special Nuclear Materials Act ("Nuclear Materials Act"), amending the Atomic Energy Act of 1954, the United States executive imposed an absolute embargo on enrichment by the United States of foreign uranium for use by United States utilities. This embargo caused severe damage to Canada's uranium industry. It also disrupted Canada-United States relations. The position advanced by the Respondents in this case, if successful, could have a comparable adverse impact.[2]

On January 2, 1988, President Reagan and Prime Minister Mulroney signed a comprehensive Free Trade Agreement ("FTA") between the United States and Canada. In one provision, the United States would specifically exempt Canada from any restrictions on the enrichment of foreign uranium under the Nuclear Materials Act. The joint signing of the FTA by the United States President and the Canadian Prime Minister does not moot Canada's substantial interest in the outcome of this case, however. The FTA will not enter into force until January 1, 1989, after an exchange of diplomatic notes certifying the completion of domestic legal requirements necessary to give effect to the treaty.

The government of Canada has an interest in the application of the national laws of its trading partner in a manner consistent with international legal obligations accepted by Canadian and American authorities. Both governments have a long-standing interest in the development and application of international law. It has followed closely the relationship between the General Agreement on Tariffs and Trade ("GATT") and the national legal obligation of both Canada and the United States, with particular reference to a uranium fuel embargo, and may therefore bring to the Court's attention relevant considerations not directly addressed by the parties or other amici.

[2] The depth of the concern triggered by this case is expressed in a diplomatic note submitted by the government of Canada to the Department of State on July 22, 1987 (Diplomatic Note No. 194, Appendix A).

STATEMENT

This case represents the latest chapter in a half-century of complex history between the United States and Canada regarding uranium.

1. *Early Cooperation*

In April 1941, President Roosevelt and Prime Minister MacKenzie King issued a joint declaration regarding cooperation for mutual protection ("Hyde Park Declaration"). This laid the foundation for a common North American defense industrial base, expressed in several ensuing bilateral agreements. This network of agreements has remained an important feature of the Canada-United States relationship underlying our common security interests.[3]

The Canadian uranium industry was developed, with encouragement from United States officials, mainly to supply United States Atomic Energy Commission ("AEC") needs, and during the ten-year period 1957-67 approximately 84 percent of Canada's total exports of uranium concentrates were shipped to the United States under long-term contracts.

In 1954, Congress passed the Atomic Energy Act, 68 Stat. 919 (codified at 42 U.S.C. § 2011 et seq. (1982)).

[3] *See* J. Fried, *The Impact of U.S. Export Controls on Trade Between Canada and the United States*, 11 Canada-United States L.J. 185, 189 (1986).

This gave the AEC monopoly ownership of enriched uranium in the United States. Uranium ore does not contain sufficient fissionable uranium (U-235) to be used as an energy fuel. It must be enriched in a process which increases the U-235 content. Until the late 1970's the only free-world enrichment facilities available to suppliers of uranium to U.S. utilities were operated in the United States by the U.S. government. Since then, however, The Netherlands, Great Britain, France, The Federal Republic of Germany, and The U.S.S.R. have opened enrichment facilities to private parties for the enrichment of commercial grades of uranium ore. As a result, the United States has now lost the monopoly over commercial uranium enrichment which it held well into the 1970's.

In 1959, the AEC announced that it would not contract further for Canadian uranium. This caused a depression in the Canadian uranium industry as long-term contracts expired. *See* T. Neff, *The International Uranium Market*, at 143 (1984). In 1964 Congress passed the Nuclear Materials Act here under review.[4] For the first time it authorized the private ownership of commercial nuclear fuel. The Act provided for the enrichment of such uranium ore in U.S. government-owned facilities.

2. *The Embargo*

By a 1966 regulation issued pursuant to the Nuclear Materials Act, the AEC began to allow contracting for the enrichment of domestic ore for sale in the United States, while refusing to enrich Canadian and other

[4] In relevant part, the Act states:

> *[T]o the extent necessary to assure the maintenance of a viable domestic uranium industry*, [the DOE] shall not offer [uranium enrichment] services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States.

42 U.S.C. § 2201(v) (1986) (emphasis added).

foreign-source uranium for U.S. utilities. *See Uranium Enrichment Services Criteria*, 31 Fed. Reg. 16,479 (1966). By this action the AEC effectively excluded 70% of the then free world market for commercial uranium fuel from Canadian and other foreign competition. This resulted in a dramatic increase in the severity of the depression experienced by the Canadian uranium industry.[5]

This embargo remained totally in effect for 10 years. Beginning in 1977, it was gradually phased out, and was eliminated only in 1984. Throughout the embargo, the Canadian government took various actions to try to defend the interests of the Canadian uranium industry. Canada repeatedly protested to the United States with respect to the incompatibility of the U.S. embargo with United States obligations under the GATT.[6]

In 1971, Canada took the initiative with other producing nations in formulating and implementing an international marketing arrangement relating to what was left of the free world market after imposition of the U.S. embargo. This arrangement operated for approximately three years, from 1972 to 1975.

The export of commercial uranium from Canada required explicit approval of the government of Canada. Government control was effected through general ministerial directions issued to the Canadian Atomic Energy Control Board, among other measures. Even though the U.S. market was foreclosed to Canadian imports until the

[5] In Diplomatic Note No. 210 of August 4, 1969, Canada asserted to the United States that "Canada's industry is now operating at less than one-third of its current capacity—a capacity initially developed in response to U.S. requirements." It went on to state that Canadian exports of uranium ore had fallen to $25 million, compared with more than $300 million in exports a decade earlier.

[6] *See, e.g.*, Diplomatic Note No. 359, from the Embassy of Canada (December 3, 1971) (attached hereto as Appendix B).

embargo was lifted, the U.S. Department of Justice convened an international uranium antitrust Grand Jury, and several private antitrust actions were maintained in U.S. courts. These actions sought to hold Canadian companies liable for breaches of U.S. antitrust law, notwithstanding that the companies were complying with Canadian law and policy established in reaction to anticompetitive market manipulation put in place by United States officials.[7]

The Canadian government vigorously and repeatedly asserted that the exercise of jurisdiction by U.S. courts in these proceedings violated international law.[8] The Grand Jury investigation led to the criminal prosecution of a Canadian corporation acting in furtherance of explicit Canadian policy (*United States v. Gulf Oil Corp.*, No. 78-123 (W.D. Pa., filed May 9, 1978)), and the private antitrust suits led to substantial monetary recoveries against Canadian and other enterprises.

3. *Recent Events*

The two-decade embargo ended in January 1984. Before the year was out, the Respondents, three United States uranium producers, brought this action in the United States District Court for the District of Colorado. They claimed that the Department of Energy ("DOE"), as successor to the AEC, had violated the Nuclear Materials Act by its failure to impose a new embargo on the U.S. enrichment of foreign uranium for use by United States utilities. The Department had made a finding that

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[7] *See, e.g., In Re Uranium Antitrust Litigation*, 617 F.2d 1248 (7th Cir. 1980); *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), *appeal dismissed and cert. denied*, 451 U.S. 901 (1981).

[8] *See, e.g., In Re Uranium Antitrust Litigation*, 617 F.2d at 1253; Stanford, *The Application of the Sherman Act to Conduct Outside the United States: A View From Abroad*, 11 Cornell Int'l L.J. 195, 202 (1978).

the U.S. uranium industry was not viable for 1984 and has since found that the industry was not viable during 1985. *1986 Viability Assessment* at ix.

In considering the reasons for its determination of non-viability, the DOE found specifically that the non-viability was not caused by imports of foreign uranium for U.S. enrichment. Non-viability was found instead to be the result of two principal factors: (1) the U.S. industry is unable to meet low cost foreign competition in foreign markets; and (2) the demand for commercial uranium fuel is significantly below anticipated levels, so that overwhelming excess of supply has depressed fuel prices—a market condition which will prevail regardless of whether a new embargo is imposed.

The DOE also concluded that a new embargo would be futile because the U.S. has lost market power over the enrichment of commercial uranium. This is because foreign uranium would still find its way to U.S. utilities via foreign enrichment, even if a new embargo were imposed.[9]

In June 1986, the District Court granted the Respondents summary judgment. Its order required the DOE to reimpose a full embargo, whether or not the embargo would restore the domestic industry to a state of viability. Appeal was taken to the United States Court of Appeals for the Tenth Circuit, which, on July 20, 1987, affirmed the District Court's decision and order. 825 F.2d 1430 (10th Cir. 1987). In holding that the statute required the DOE to suspend enrichment of foreign uranium for use by U.S. utilities where it finds the domestic industry not to be viable, the Court of Appeals did not consider the relevance of U.S. international legal obligations.

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[9] *See* 51 Fed. Reg. 27,132, 27,135-36 (1986), codified at 10 C.F.R. § 762.3 (1987).

SUMMARY OF ARGUMENT

Article III, paragraph 4 of the GATT, which provides for national treatment of imports into participating countries, has been adopted as the law of the United States. The legislative history of Section 2201(v) of the Nuclear Materials Act reveals that Congress intended any restrictions to foreign ore enrichment thereunder to be applied only in a manner minimizing conflict with United States GATT obligations.

The decision below adopts a construction of the section that not only conflicts with its plain meaning and its legislative history, but fails to employ settled principles of statutory construction, where, as here, an existing international legal obligation of the United States is implicated. It therefore should be reversed.

ARGUMENT

I. THE GATT IS U.S. LAW; SUBSEQUENT STATUTES SHOULD BE CONSTRUED TO MINIMIZE CONFLICT

The GATT is a multilateral international agreement; the primary instrument governing the regulation of international trade. *See Zenith Radio Corp. v. United States*, 437 U.S. 443, 457 (1977) ("the General Agreement on Tariffs and Trade (GATT) . . . is followed by every major trading nation in the world. . ."). Canada, the United States, and about ninety other nations are parties.[10] The Protocol of Provisional Application of the

[10] In 1938, the United States entered into an executive agreement with Canada relating to reciprocal trade. 53 Stat. 2348, E.A.S. No. 149. This agreement extended most-favored-nation status to each country with respect to duties and "to all laws or regulations affecting the sale or use of imported goods within the country." (Article I). In 1947, the United States and Canada exchanged letters in which the countries agreed that the 1938 Agreement "shall be inoperative for such time as the United States of America and Canada are both contracting parties to the [GATT]. . . ." 61 Stat. 3965, T.I.A.S. No. 1702. These letters are further evidence that the United States and Canada recognize the reciprocal obligations the GATT imposes.

GATT was executed under Presidential Authority,[11] delegated under the Tariff Act of 1930, as amended.

The Nuclear Materials Act was enacted after the United States became a contracting party to the GATT. Although the law adopted later in time prevails when federal statutes and international agreements unavoidably conflict, *see* Restatement § 135, reporter's note 1, it is just as well established that wherever possible, subsequent federal statutes should be construed in harmony with existing international agreements. *See Lauritzen v. Larsen*, 345 U.S. 571, 578 (1953); Restatement of the Foreign Relations Law of the United States (Revised) (Tent. Final Draft, 1985) § 134 and cases cited therein. Therefore, before finding that Congress has abrogated or modified an international agreement, this Court has required that Congress clearly express its intent to do so. *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984).

II. CONGRESSIONAL INTENT TO MINIMIZE CONFLICT WITH THE GATT WHEN CONGRESS PASSED SECTION 2201(v) REQUIRES REVERSAL OF THE DECISION BELOW

Far from providing a clear expression of intent to abrogate or modify U.S. obligations under the GATT,

[11] 61 Stat. pts. (5), (6), T.I.A.S. No. 1700 (1947). The GATT was adopted as U.S. law by Presidential Proclamation. Proclamation No. 2761A, 12 Fed. Reg. 8863 (1947). *See also United States v. Star Industries, Inc.*, 462 F.2d 557, 563 (C.C.P.A.), *cert. denied*, 409 U.S. 1076 (1972); Jackson, *The General Agreement on Tariffs and Trade in United States Domestic Law*, 66 Mich. L. Rev. 249, 253 (1967). *See also* Restatement (Second) of the Foreign Relations Law of the United States §§ 143 and 144 (1965).

Congress was clear that § 2201(v) was to be read to minimize any potential conflict between possible future restrictions on foreign source uranium ore and U.S. GATT obligations. Article III, paragraph 4 contains the national treatment provision, one of the GATT's central elements. It states:

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

Article III, paragraph 4 is quite broad and applies to all regulations that *affect* the sale of a product whether, directly or indirectly. Thus, even though the government provides a service, if the effect of a services limitation is to limit the sale of imported products, Article III, paragraph 4 would be contravened. In short, the GATT is concerned with effect, not method.[12] An embargo on enriching foreign uranium at U.S. facilities would similarly affect the sale of foreign uranium in violation of the GATT.[13]

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[12] *See, e.g.*, GATT Report, United Kingdom Complaint on Italian Discrimination Against Imported Agricultural Machinery, GATT Doc. L/833, 7th Supp. B.I.S.D. 60 (1958) (credit facilities should be provided to purchasers of Itlaian-manufactured agricultural machinery, whatever the machinery's origin).

[13] The six Western states, in their amicus brief opposing certiorari, suggest that Section 2201(v) is not within the GATT because any limitation of enrichment would be a condition of providing a service. Brief for Amici Curiae States in Opposition to Petition for Certiorari at 17 n.40 ("Brief for Amici"). This view ignores the clear contrary intent of Article III, paragraph 4.

Moreover, whatever the present views of certain U.S. trade officials, the legislative history is clear that Section 2201(v) was

Specific concern was raised by Congressional sponsors of the bill about the consistency of possible enrichment limitations for foreign uranium and the national treatment standard of Article III. AEC Chairman Glenn T. Seaborg specifically urged the State Department to address the issue. In a letter to Seaborg on June 8, 1964, Deputy Undersecretary of State U. Alexis Johnson expressed the U.S. Department of State view that:

> discriminatory limitations on the domestic use of enriched foreign ore would be in direct conflict with either or both of this Government's long-standing policy of promoting the reduction or elimination of existing trade barriers and the avoidance of new restrictions and its international commitments under the General Agreement on Tariffs and Trade (GATT). . . . [Notwithstanding, we] . . . appreciate that the Commission's proposal, under which foreign ore would not be toll enriched for domestic use during the period 1969 to 1975, is transitional in nature within the framework of a significant gradual liberalization of AEC nuclear fuel supply practices . . . . [T]he Department does not object to the Commission's proposal on the understanding that the situation will be kept under continuing examination with a view to avoiding the imposition of restrictions or to relaxing any restrictions when and

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passed by the Congress with the understanding that the purpose of the enrichment restriction was to restrict, in limited circumstances, the import of a GATT-covered product in a manner causing as little conflict with Article III as possible.

The six Western states also suggest, Brief for Amici at 17 n.41, that under Article XXI(b)(i) of the GATT, the U.S. is free to impose whatever restrictions it desires with respect to fissionable materials. The plain fact is that, in enacting the Nuclear Materials Act, the United States government never claimed that Article XXI applies to the enrichment at issue in the Nuclear Materials Act and it is doubtful that the government could do so given that enriched uranium is used commercially in the United States.

> to the degree that this can be done consistent with the national interest.[14]

Shortly after the transmission of this letter, Joseph A. Greenwald, Director of the State Department's Office of International Trade, testified before the Legislation Subcommittee of the Joint Congressional Committee on Atomic Energy. Mr. Greenwald was asked by Joint Committee members, to whom the Johnson letter had been submitted, whether, under legislation which was to become Section 2201(v), the provision for limitations on the domestic use of enriched foreign ores, would "square with our international obligations." Hearings at 336 (Statement of Joseph A. Greenwald, State Dep't). Referring to the Johnson letter, Greenwald reiterated the basic conclusion that "discriminatory limitations on the domestic use of enriched foreign ores would be in direct conflict with our international commitments under GATT" (citing Article III, ¶ 4). Mr. Greenwald then continued with the observation that, nonetheless, he believed that the proposed legislation would be a mere technical violation of the GATT, if "done on a transitional basis" not inconsistent "with the [GATT] spirit as long as we made it clear we are trying to move to complete compliance with the GATT provision." Hearings at 337.

There is nothing in the legislative record to indicate that any member of Congress took issue with or rejected the conflict minimization objective put forward by Messrs. Johnson and Greenwald. On the contrary, the portion of the Joint Committee Report on the Nuclear Materials Act specifically discussing Section 2201(v) indicates that the Joint Committee accepted the Johnson-

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[14] Private Ownership of Special Nuclear Materials, 1964: Hearings on H.R. 5035 and S. 1160 Before the Subcomm. on Legislation of the Joint Comm. on Atomic Energy, 88th Cong., 2d Sess. 410-11 (1964) (hereinafter "Hearings") (Letter from U. Alexis Johnson to Glenn T. Seaborg (June 8, 1964)).

Greenwald understanding of the provision, i.e., that any restriction pursuant to it must be transitional toward full GATT compliance, and must be effected in a manner most consistent with U.S. trade obligations. It states:

> the committee believes that these *reasonable and flexible* restrictions on the performance of [enrichment] services by the Commission should not in any sense be deemed inconsistent with any obligations the United States may have under the General Agreement on Tariffs and Trade (GATT) and other international trade agreements. (emphasis added).

S. Rep. No. 1325, 88th Cong., 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Admin. News 3105, 3121 (1964).

The government of Canada strongly disagrees with the position that any restriction imposed pursuant to Section 2201(v) could be consistent with United States GATT obligations. A technical or transitional violation, though perhaps less egregious, is still a violation. The record, however, shows that this view was accepted by the Congress and that the Congress did expect enforcement in a manner that would minimize conflict.

The legislative history of the Nuclear Materials Act contrasts sharply with that found in, e.g., *Diggs v. Schultz*, 470 F.2d 461 (D.C. Cir. 1972), *cert. denied*, 411 U.S. 931 (1973). In *Diggs*, the "Byrd Amendment" to the Strategic and Critical Materials Stockpiling Act provided that "[n]otwithstanding any other provision of law," the President may not restrict importation of certain materials. *Id.* at 463. Appellees were licensed by the U.S. government to import materials contrary to a United Nations boycott. The license was challenged as contrary to U.S. treaty obligations. The court found that the intent of the Byrd Amendment "was to detach this country from the U.N. boycott . . . ." *Id.* at 466. The court noted that "[t]he legislative record shows that no

member of Congress voting on the measure was under any doubt about what was involved . . . it was . . . a measure which would make—and was intended to make —the United States a certain treaty violator." *Id.* In stark contrast, the Joint Committee Report for the Nuclear Materials Act shows that Congress believed that its action was consistent with the GATT.

In applying these "reasonable and flexible" restrictions, DOE should, as it would, refuse to reimpose a futile embargo because such refusal ensures that the Nuclear Materials Act is not applied in a manner inconsistent with U.S. GATT obligations. That was the Congressional directive. Therefore, its refusal is not only supported by a plain reading of the statute (as the Petitioner and supporting amici have cogently demonstrated), but by the explanation of the section adumbrated by the Joint Committee Report and by sound principles of statutory construction. To deny DOE this authority is to read into the statute what is not there.

CONCLUSION

The DOE has been following the mandate of Congress in Section 2201(v). Ignoring that mandate, the court below would force the DOE not only to violate the statute but also United States international obligations. The next chapter in the United States-Canada uranium story should be one of cooperation and mutual interest. That will not happen without this Court's reaffirmation of Congressional intent.

Accordingly, the judgment of the Court of Appeals for the Tenth Circuit should be reversed.

Respectfully submitted,

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February 25, 1988

APPENDICES

APPENDIX A

Canadian Embassy — Ambassade du Canada
Note No. 194

The Embassy of Canada presents its compliments to the Department of State and has the honour to refer to a decision of July 20, 1987, in the United States Court of Appeals for the Tenth Circuit to provide relief to the United States' domestic uranium industry based or Section 161 (V) of the Atomic Energy Act of 1954. The court has concluded that the previous decision of the United States District Court for the District of Colorado was correct with respect to the statutory obligation under Section 161 (V), and has affirmed that injunctive relief was appropriate by enjoining the Department of Energy to limit the enrichment of uranium of foreign origin destined for use within the United States. The result of this decision is that there is now in effect a complete ban on the enrichment of foreign uranium in the United States.

It is the view of the Government of Canada that the decision, should it remain in force, will severely disrupt Canadian exports of uranium to the United States, will have harmful implications for the international uranium market, and will give rise to major trade irritants between the United States and its current suppliers of uranium. In addition, restricting the United States market to only domestic uranium would be completely at odds with current efforts to negotiate a free-trade agreement between our two countries, contrary to declarations against protectionism made at Punta del Este, and clearly inconsistent with the United States' GATT obligations.

Canada will be the foreign supplier most adversely affected by this restriction. Canada is a reliable, fair and competitive supplier of uranium to many countries and is, by far, the largest foreign supplier to the United

States. One-third of Canadian uranium production is exported to meet the requirements of United States power utilities. These sales, which exceed $200,000,000 in 1985, represent nearly 70 percent of total U.S. uranium imports.

It must be recognized that, to the extent United States utilities choose not to purchase enrichment services abroad, the affirmation of the lower court's decision represents a total embargo on imports of uranium from Canada. The Canadian government is very concerned to see the world's largest market for uranium once again protected by unilateral non-tarrif [sic] barriers as it was during the period from 1967 to 1984.

The Government of Canada urges the Government of the United States to appeal this court decision so that unrestricted access for foreign uranium will be restored. If it is found that this decision cannot be appealed, the Government of Canada would urge that all legislative and administrative avenues be actively explored to effect the elimination, or at least the significant reduction, of this unilateral import restriction.

The Embassy of Canada takes this opportunity to renew to the Department of State the assurances of its highest consideration.

[Signed and Sealed
with Embassy seal]

July 22, 1987
Washington, D.C.

APPENDIX B

Canadian Embassy — Ambassade du Canada
Note no. 359

The Canadian Embassy presents its compliments to the Department of State and has the honour to refer to the October 13th proposal announced by the United States Atomic Energy Commission for the retention of its prohibition against the domestic enrichment of imported uranium for consumption in the United States and for the disposal of its 50,000 ton stockpile of surplus natural uranium concentrates on domestic and foreign markets. The Government of Canada wishes to state its strong opposition to such a policy.

The Canadian Government has made repeated repretations to the United States Government with respect to its restriction on the domestic utilization of imported uranium. The Canadian Government has pointed out that this restriction has a very serious depressing effect on the Canadian Uranium Industry and is seriously jeopardizing its future prospects. The Canadian Government has also pointed out that the restriction conflicts with United States' obligations and Canadian rights under the GATT, and has requested that the United States Government undertake to remove the restriction by a specified early date.

Notwithstanding these representations and repeated assurances from the United States Government that the restriction was temporary, including indications that a phased removal program would begin before the middle of the decade, the United States Atomic Energy Commission proposed on October 13th to take no action toward lifting this restriction until the United States Mining and Milling Industry was in a stronger growth position. When such a growth position was achieved, perhaps around the end of the decade, a partial removal of the

restriction would be considered. The Canadian Government views this proposal with great concern. The Canadian industry is operating far under capacity—a capacity in large part initially developed in response to United States requirements for uranium. The present depressed state of the Canadian industry is mainly attributable to the United States' restriction which has precluded Canadian competition for contracts to supply the United States' civil nuclear market. The future prospects of the Canadian Uranium Industry, including its ability to supply anticipated long term demand for uranium in the United States, would be seriously jeopardized by the maintenance of the restriction.

The Canadian Government is also seriously concerned about the Commission's proposal for the disposal of 50,000 tons of surplus uranium concentrate on domestic and foreign markets, particularly in view of the large stockpiles held by several other countries including Canada. In particular, in contrast to the detailed provisions in the Commission's proposal to safeguard the viability of the domestic industry, the proposal makes no explicit provisions designed to avoid disruption, in markets outside the United States, which could have severe adverse consequences for the viability of Canadian uranium producers. While no indication is given of the magnitude of possible sales outside the United States, the illustrative schedule for domestic disposals allows for annual disposal levels of up to 7,500 tons for some years—almost double the current rate of Canadian production. Sales in foreign markets amounting to even a small proportion of this level could further aggravate the depressed state of Canadian uranium producers and seriously endanger their viability.

The Canadian Government requests therefore that the United States Government undertake to avoid disposal of stockpile material in any manner disruptive to normal commercial sales from Canadian producers, and to honour

its obligations under the GATT by announcing at the earliest possible date the lifting of its restriction on domestic utilization of imported uranium.

The Canadian Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

WASHINGTON, D.C.
December 3, 1971

[Signed and Sealed
with Embassy Seal]